

Atty. Dkt. No. 051009-0119

REMARKS

Applicant acknowledges receipt of an Office Action dated November 20, 2003. Claims 1-16 remain pending in the application. The PTO has withdrawn claims 12-14 from consideration as being drawn to non-elected subject matter. Thus, claims 1-11 and 15-16 are currently pending and under consideration. Applicant notes that claims 15 and 16 were added in a preliminary amendment filed March 14, 2002.

Reconsideration of the present application is respectfully requested in view of the remarks which follow.

Rejections Under 35 U.S.C. §103

On page 2 of the Office Action, the PTO has maintained the rejection of claims 1-11, 15 and 16 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 5,612,104 to Grund (hereafter "Grund") in view of U.S. Patent 4,979,274 to Chacko *et al.* (hereafter "Chacko"). Applicant respectfully traverses this rejection for the reasons set forth below.

In the Office Action, the PTO has asserted that it would have been obvious for a person skilled in the art to have incorporated the block polyether amide of Chacko into the inner and outer polyamide layers of the 5-layered casing as taught by Grund because of Chacko's alleged teaching or suggestion that the poly(amide-ether) composition has a combination of low initial modulus, while maintaining good ultimate tensile strength and ultimate elongation so as to allow the film to conform easily to a mold and yet permit stretching.

In any obviousness determination, prior art must be considered in its entirety, i.e. as a whole, including portions that would teach/lead away from the claimed invention. (See MPEP §2141.03). Here, Grund teaches away from the combination suggested by the PTO in the Office Action. At col. 1, lines 16-18, Grund states that "[c]asings used for such food stuffs have to meet various requirements in order to be suitable in practice". (Emphasis added). In this context, Grund, at col. 1, lines 38-40, states that "[t]he casing must have a high oxygen barrier to prevent early greying of the filling surface even during storage without cooling."

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(Emphasis Added). Grund goes on to state, at col. 4, lines 57-58, that the "outer layer is also responsible for the high oxygen barrier of the casing." A person skilled in the art would have expected that adding additional polymers results in decreased oxygen barrier properties of the casing. Thus, Applicant submits that Grund's disclosure would lead one of ordinary skill in the art away from the combination proposed by the PTO. Furthermore, at, for example, col. 5, lines 1 -12, Grund discloses that the inner and outer layers of the tubular film, which are built up of the same material, consist of at least one aliphatic (co-)polyamide and/or at least one partially aromatic (co-)polyamide. This leaves no room for additional or other polymers in the inner and outer layers.

Chacko broadly discloses, in the prior art section, that polyamides have been widely used in film form for packaging in food, medical and industrial applications (see col. 1, Lines 24- 26). For certain film uses, Chacko states that the conventional polyamide films are less suitable since their ability to drape or conform to a particular shape is limited, due to the stiffness of the polyamide (see col. 1, Lines 36 -40). Furthermore, Chacko states that the conventional polyamide films are said to have tendency to stiffen upon exposure to heat, which makes it difficult to use them in vacuum forming processes (col. 1, Lines 40 -42).

According to Chacko the problem is solved with a polyamide composition comprising a polyamide resin and a block copolymer of poly(amide ether) of the formula depicted in col. 2. It is useful as a molding composition which is in turn converted in molded articles with high impact strength (see col. 1, Lines 51 -58). Chackbo states that films made of the composition have improved hand and drape properties and conform to complicated shapes in processes such as vacuum molding and bagging (see col. 4, Line 66, to col. 5, Line 1). All of the films disclosed or contemplated in the reference are mono-layered films. They may be formed by extrusion (col. 4, line 44) and they may further be oriented, either uniaxially or biaxially (col. 4, line 51). Pebax 5533 is recited as an example of a useful poly(amide ether) block copolymer (col. 6, lines 25 -27). Furthermore, there is no indication that the polyamide composition according to the reference could be useful to produce sausage casings or other food casings.

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The five-layered tubular polyamide film of Grund is produced by coextrusion and subsequent biaxial stretching. It is not subjected to any molding conditions. Sausage casings do not need to conform to complicated shapes. Thus, any specific advantages disclosed by Chacko in the context of such diverse fields as medical, food and industrial packaging would not be advantages that a person skilled in the art would seek out the context of sausage casings. A person skilled in the art thus would not have found motivation to employ the specific poly(amide-ether) block copolymers in the five-layer sausage casing as taught by Grund.

For the foregoing reasons, Applicant submits that claims 1-11 and 15-16 are non-obvious and respectfully requests reconsideration and withdrawal of this rejection under §103.

CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully submits that all of the pending claims are now in condition for allowance. An early notice to this effect is earnestly solicited. If there are any questions regarding the application, the Examiner is invited to contact the undersigned at the number below.

Respectfully submitted,

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